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126881—38

In the Supreme Court of the United States

OCTOBER TERM, 1934

No.

UNITED STATES OF AMERICA, PETITIONER

v.

A. L. A. SCHECHTER POULTRY CORPORATION, MARTIN SCHECHTER, ALEX SCHECHTER, AND AARON SCHECHTER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above case on April 4, 1935, reversing that part of the judgment of the District Court for the Eastern District of New York which relates to Counts 46 and 55 of the indictment.

OPINIONS BELOW

The opinion of the District Court (R. 131-164) on the demurrer to the indictment is reported in 8 F. Supp. 136. The opinion of the Circuit Court of Appeals is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 4, 1935. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the provisions for a minimum wage of 50 cents per hour and a maximum work week of 48 hours for slaughterhouse employees, contained in the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York, approved by the President under the National Industrial Recovery Act, are within the power of Congress under the commerce clause of the Constitution.

STATUTE AND CODE PROVISIONS INVOLVED

The pertinent provisions of the Act of June 16, 1933, known as the National Industrial Recovery Act, and of the Code, are set forth in the Appendix, *infra*, pp. 6–10.

STATEMENT

This case came to the court below upon appeal by the respondents and two others (Schechter Live Poultry Market and Joseph Schechter) from a judgment of the District Court of the United States for the Eastern District of New York (R. 1555–1556) entered upon a verdict (R. 1547–1552) finding each of them guilty on a number of counts

alleged in an indictment. A verdict of guilty was found and judgment entered on an aggregate of nineteen counts, of which eighteen alleged violations of several provisions of the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York (hereinafter called the Code), and one alleged a conspiracy to violate the Code and the National Industrial Recovery Act.

The judgment of the Circuit Court of Appeals sustained the judgment of the District Court with respect to all of said counts excepting counts 46 and 55.[1] Count 46 (R. 101-102) charged respondents with paying an employee less than at the rate of fifty cents per hour during the week ending on or about June 22, 1934, in violation of Sections 1 and 2 of Article IV of the Code (Appendix, *infra*, p. 10). Count 55 (R. 111-112) charged respondents with employing a person, at a slaughterhouse operated by them, for more than sixty hours during the week ending on or about June 22, 1934, in violation of Section 1 of Article III of the Code (Appendix, *infra*, p. 9).

[1] The respondents and Schechter Live Poultry Market and Joseph Schechter have filed a petition for a writ of certiorari to obtain a review in this Court of so much of the judgment of the Circuit Court of Appeals as affirmed the judgment of the District Court. The United States of America (petitioner herein) has filed a memorandum in this Court acquiescing in the issuance of the writ. The Schechter Live Poultry Market and Joseph Schechter were not indicted under counts 46 and 55.

With respect to these two counts the judgment of the District Court was reversed, a majority of the Circuit Court of Appeals holding that these provisions of the Code are in excess of the power of Congress under the commerce clause. Petitioner seeks review of this holding.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the provisions for a minimum wage of fifty cents per hour and a maximum work week of forty-eight hours for slaughterhouse employees, contained in the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York, approved by the President under the National Industrial Recovery Act, exceed the power of Congress under the commerce clause of the Constitution.

2. In reversing that part of the judgment of the District Court relating to counts 46 and 55 of the indictment.

REASONS FOR GRANTING THE WRIT

All codes of fair competition approved by the President under the National Industrial Recovery Act contain minimum wage and maximum hours provisions, as required by Section 7 (a) of the Act (Appendix, *infra*, pp. 8–9). The issue as to the validity of such provisions is, therefore, of vital concern to each of the many industries for which codes

have been approved. A number of cases involving such provisions are pending in the lower Federal courts. The question presented is one of general public importance which should be settled by this Court. A bill to amend Title I of the National Industrial Recovery Act and to extend the date of expiration of that Title to June 16, 1937, has been introduced in the Senate (S. 2445, 74th Cong., 1st Sess.). This bill would continue in effect the requirement contained in Section 7 (a) for the inclusion in codes of minimum wage and maximum hours provisions. The question is, therefore, not only one of present importance but is likely to arise in the future.

In view of the immediate importance of this case, petitioner respectfully requests, if the writ of certiorari is granted, that the Court set the case for argument during the session of this term of Court beginning April 29, 1935, and preferably during the week commencing May 6, 1935, if the Court is then sitting.

Wherefore, it is respectfully submitted that the petition should be granted.

STANLEY REED,
Solicitor General.

APRIL, 1935.

APPENDIX

Title I of the National Industrial Recovery Act, approved June 16, 1933, c. 90, 48 Stat. 195 (U. S. C., Supp. VII, Title 15, Secs. 701, 703 (a), 703 (f), 707 (a))-reads, in part, as follows:

An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I. INDUSTRIAL RECOVERY

DECLARATION OF POLICY

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under ade-

quate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

* * * * *

CODES OF FAIR COMPETITION

SEC. 3 (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a

condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

* * * * *

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

* * * * *

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employ-

ment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

* * * * *

The Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York reads in part as follows:

* * * * *

ARTICLE III. Hours

SECTION 1. No employee shall be permitted to work in excess of forty (40) hours in any one week, except as herein otherwise provided. A normal work day shall not exceed eight (8) hours on any day except Thursday and Saturday, when it shall not exceed twelve (12) hours.

(a) Executives, managerial and or professional employees and outside salesmen, provided they regularly receive thirty five dollars ($35.00) per week or more.

(b) Slaughterhouse employees provided that they shall not work more than forty eight (48) hours in any one week.

(c) During Jewish holidays and legal holidays, employees may be permitted to work in excess of the hours herein provided on condition, however, that the total number of such days shall not exceed forty two (42) in any one calendar year.

(d) Employees on emergency maintenance or repair work involving break down or protection of life or property may be permitted to work in excess of the maximum

hours hereinabove set forth provided that all hours in excess of the maximum are compensated at time and one-third.

* * * * * *

ARTICLE IV. WAGES

SECTION 1. No employee shall be paid in any pay period less than at the rate of fifty (50) cents per hour except that:

(a) Overtime work, as provided for in Article III, section 1 (d), shall be paid for at not less than time and one-third for such weekly overtime.

(b) Work time on Sundays, Jewish holidays, and on legal holidays shall be paid for at not less than at the rate of time and one-third.

(c) After the effective date of this code wages shall be exempt from any charges, fines, rebates, or deductions, or any other form of deducting or withholding wages, except for employees' voluntary contributions for pensions, insurance, or benefit plans, and no employer shall withhold wages except upon legal process, or other papers lawfully requiring such withholding.

(d) Employers shall make payment of all wages in lawful currency or by negotiable checks payable on demand. Payments of wages shall be made at least once every two weeks.

SEC. 2. This article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time-rate, piecework, or other basis.

* * * * *

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